

APPROVED

**VERMONT SUPREME COURT
ADVISORY COMMITTEE ON RULES OF PROBATE PROCEDURE**

**Minutes of Meeting
June 17, 2021**

The meeting was called to order at 1:45 p.m. on Teams by Hon. Jeffrey Kilgore, chair. Present virtually were Committee members Michael Gawne, Matthew Getty, Brian Hesselbach, Daniel Kimbell. Hon. Kathryn Kennedy, Laurie Rowell, Hon. Justine Scanlon, Justin Sheng, and Norman Smith. Also present virtually were Hon. William Cohen, Supreme Court liaison, and Professor Emeritus L. Kinvin Wroth, Reporter.

1. **Approval of draft minutes of the meeting of March 25, 2021.** The minutes of the meeting of March 25, 2021, were unanimously approved as previously circulated.

2. **Status of proposed and recommended amendments.**

A. Effect on Probate Rules of draft amendments to the 2020 Vermont Rules on Electronic Filing. The Committee considered the issues presented by the Electronic Filing Rules Committee's proposed drafts of V.R.E.F. 3(b) and 12(c) incorporating exceptions for probate documents that had to be physically retained, as discussed at the Committee's March 25 meeting. Judge Kilgore reported that the Probate Judges did not pursue the issue, which was in part addressed by the third sentence and fourth bullet of the Court Administrator's April 7, 2020, Policy re: destruction of paper filings. He continued to feel that it was important to have an E-filing or Probate Rule that would make clear which paper documents need to be preserved as originals. He intended to pursue the question with Judge Morris, Reporter to the E-filing Rules Committee. Members of the Committee supported this initiative. Justice Cohen made clear that he took no position on the issue.

B. Effect on Probate Rules of proposed amendments to Appellate Rules and E-filing Rules concerning electronic appeals to Supreme Court. Professor Wroth reported that the proposed amendments had been circulated to the bar for comment on May 24, with comments due on July 2, 2021. V.R.A.P. 13(a), concerning the record on direct appeals from the Probate Division would be amended to delete the reference to a certified copy of the record, which is not needed because there is access to the electronic case file, and the reference to the 2010 Electronic Filing Rules, which have been abrogated. V.R.E.F. 7(d) would be added to make clear that the format requirements of that Rule are in addition to any form or format requirements imposed by other procedural rules.

C. Issues concerning AO 49 as amended through May 13, 2021. Professor Wroth reported that AO 49 was amended on April 8, 2021, to allow the Chief Superior Judge to authorize jury trials in venues that could accommodate them, subject to public health concerns, and to encourage the use of six-member juries in civil actions. AO 49 was further amended on May 13, 2021, to extend the Order to July 5, 2021, and to eliminate mandatory remote hearings effective June 14, 2021.

D. V.R.P.P. 73 to implement 14 V.S.A. § 118 providing for direct reference to the Civil Division of matters involving wills. Professor Wroth reported that the Rule was promulgated April 5, effective June 7, 2021. Judge Kilgore reported that it was reviewed by the Legislative Committee on Judicial Rules on June 16, 2021, with a brief comment by Representative Lalonde but no further action.

3. **V.R.P.P. 17(a). Need for service on interested persons in light of *In re Holbrook's Estate I*, 2016 VT 13 and *Id. II*, 2017 VT 15.** Judge Kilgore reported that the subcommittee (Mr. Langan, Judge Kennedy, Judge Scanlon, and himself) had not met,

In subsequent discussion, Judge Kilgore noted that the key underlying issues are who is an “interested person” and whether the definitions in V.R.P.P. 17(a) and 14 V.S.A. § 204 are consistent. He further suggested that part of the problem was the 2009 repeal of 14 V.S.A. ch. 45, §§ 551-559, which left the question of who is an heir to case law. Perhaps the Oversight Committee should be asked to prepare legislation to address the matter. At their request, Mr. Gawne, Mr. Getty, and Ms. Rowell were added to the subcommittee. It was agreed that the subcommittee would present preliminary thoughts on resolution of the issues at the next meeting.

4. **Elections, V.R.P.P. 13, Form 49, and 14 V.S.A. § 305 and 27 V.S.A. § 105 in light of Act 195 (S.29).** Deferred pending the decision of the Vermont Supreme Court on a related issue.

5. **Review and possible comment on policy re destruction of paper filings after entering into Odyssey, 4/7/20.** It was agreed to defer consideration of this issue pending further action under agenda item 2.A.

Justice Cohen left the meeting at this point.

6. **Proposed Amendments to V.R.P.P. 66. Inventory and Accounts** (misnumbered 7 in the agenda). The Committee considered Draft 2 of proposed amendments to V.R.P.P. 66, Inventory and Accounts (June 16, 2021), prepared by Judge Kilgore and Professor Wroth on the basis of discussion at the meeting of December 3, 2020, and subsequent written comments of Committee members. In response to a question why the supplemental inventory provision of Rule 66(a)(2) was necessary, Judge Kilgore noted that it had been added by a 2020 amendment to implement 14 V.S.A. § 1053(a) as added by Act 195, § 6, Acts of 2017 (Adj. Sess.), effective July 1, 2018.

It was agreed that Rule 66(b)(1)(D) should read “...and the fair market of all firearms, and the value of each firearm, at the date of the decedent’s death.” The Reporter’s Notes should refer to 14 V.S.A. §§ 1051-1053 and provide a definition of “fair market value.”

Committee members should submit comments on the remainder of the draft to Judge Kilgore and Professor Wroth for consideration at the next meeting.

7. **Applicability of V.R.P.A.C.R. 7(a)(1)(B) in Probate Division** (misnumbered 8 in the agenda). Judge Scanlan reported that the Probate Division Oversight Committee did not pursue the question in light of prior comments by Andy Stone, Manager of Court Operations in the Office of the Court Administrator. As stated in discussions of this question in previous meetings of the Committee, V.R.P.A.C.R. 7(a)(1)(B), requiring certification by the filer that any portion of a filing containing nonpublic records complies with

the Public Access Rules, applies in the Probate Division. The most recent version of the Submission Agreement, required in lieu of a certificate of service under V.R.E.F. 11(g)(1) when all service has been made electronically, requires certification of compliance with all requirements of the Public Access Rules, including those pertaining to nonpublic information, as well as with the requirements of V.R.E.F. (11)(g)(3).

8. Need for Rules to implement Act 167 of 2020 (misnumbered 9 in the agenda). The question concerned §§ 15 (amending 14 V.S.A. § 107, allowance of wills) and 28-29 of the Act (adding 4 V.S.A. § 35 (27), providing concurrent jurisdiction with Family Division of judicial determinations issued under new 14 V.S.A. ch. 111, subch. 14 regarding the custody and care of children under certain federal Immigration legislation. Judge Kilgore reported that he had not been able to prepare a proposed rule draft for the present meeting. Judge Scanlon stated that the statutory provisions seemed straight forward and that no rule appeared to be necessary. Judge Kilgore noted that, given the concurrent jurisdiction of the Family Division under the Act, we should consider letting the Family Rules Committee take the lead in considering the need for Rules. He agreed to explore the possibility.

9. Other business. There was no other business.

10. Date of next meeting. It was agreed that the next meeting would be held at 1:30 p.m. on September 16, 2021.

There being no further business, the meeting was adjourned at 4:10 p.m.

Respectfully submitted,

L. Kinvin Wroth, Reporter